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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

IVAN GATZ et al.,

Plaintiffs and Appellants,

v.

MARTA LAUGHLIN,

Defendant and Respondent.

B190357

(Los Angeles County
Super. Ct. No. BC331275)

APPEAL from the judgment of the Superior Court of Los Angeles County.
Michael L. Stern, Judge. Affirmed.

Travis R. Jack, for Plaintiffs and Appellants.

Law Offices of Gary W. Kearney and Gary W. Kearney, for Defendant and
Respondent.

Cross-defendant Ivan Gatz appeals from the judgment entered after a bench trial where he was ordered to remove his mobilehome from the mobilehome site leased by Marta Laughlin at Malibu's Paradise Cove Mobilehome Park. Because two previous judgments determining that Laughlin was the rightful tenant of that site are res judicata of the issue, we affirm.

FACTS AND PROCEDURAL HISTORY¹

A stepmother usurping her stepchild's rightful inheritance may seem the stuff of fairy tales, but with a mobilehome perched atop a prime Malibu location standing in for the family castle, Ivan Gatz has repeatedly cast Marta Laughlin for that role in several different actions. According to Gatz, Laughlin poached her way into leasing the mobilehome site occupied by his late father, Eugene Gatz, when Gatz the elder died shortly after a divorce court awarded him both the site and the mobilehome as his separate property, but before that order was reduced to a statement of decision and judgment. Gatz sought to invalidate Laughlin's lease and establish his right to the mobilehome site in two previous actions, losing both times. In the latest action, commenced by Gatz after Laughlin broke into the mobilehome and lived there for several months, the court awarded Gatz money damages for Laughlin's trespass. Laughlin cross-complained for ejectment, seeking both money damages for the trespass by Gatz's mobilehome on her mobilehome site and an order to remove the mobilehome. The court refused to award Laughlin money damages due to her inequitable conduct, but ordered Gatz to remove the mobilehome at his expense. Gatz contends the trial court erred by ordering him to do so. Instead of once upon a time, this story begins with the divorce action between Laughlin and Eugene Gatz.

¹ This case poses factual and procedural mysteries that might require the talents of TV private eye Jim Rockford – Paradise Cove's most famous fictional resident – to unravel. We have done our best to crack them.

A. *Eugene Gatz-Laughlin Divorce Action*

After Eugene Gatz and Laughlin were married, they lived in a mobilehome on a site leased from the Paradise Cove Mobilehome Park.² The home site had idyllic views of sand, surf, and sun, and the home site lease greatly increased the value of the mobilehome. Eugene Gatz and Laughlin divorced. At an October 4, 2001, hearing to determine whether Laughlin held any community property interest in the mobilehome or the home site lease, the court ruled that both were Eugene Gatz's separate property, minus some small community property contributions toward the purchase of the mobilehome.

Eugene Gatz died on October 25, 2001. On October 31, 2001, Laughlin applied to lease the home site from Paradise Cove. On November 8, 2001, she signed a lease for the home site. On November 9, 2001, the divorce court filed its statement of decision awarding the mobilehome and the home site lease to Eugene Gatz, less approximately \$7,500 to be reimbursed Laughlin for her community property interest in the mobilehome. Judgment was not entered until September 2003, however. (Super. Ct., L.A. County, case No. BD 279948.) This left the mobilehome, which passed to Gatz, sitting on a site now ostensibly leased by Laughlin, who appealed from the divorce judgment. (*In re Marriage of Gatz*, B171573.)

B. *First Action Between Gatz and Laughlin*

In September 2002, Laughlin sued Gatz in his capacity as representative for the Estate of Eugene Gatz (the Estate) to recover unpaid sums owed her as part of the divorce decree. (Super. Ct., L.A. County, case No. BC282246.) Her claim also sought to re-adjudicate the mobilehome and home site ownership issues, pointing out that the divorce judgment was not then final and that a controversy continued over those issues. Gatz cross-complained against both Laughlin and Paradise Cove. His first two causes of

² We will refer to the mobilehome park as Paradise Cove and to the mobilehome site originally leased by Eugene Gatz as the home site.

action for breach of contract and wrongful eviction were against only Paradise Cove. Those claims were based on allegations that Paradise Cove violated provisions of the Mobilehome Residency Law (Civ. Code, § 798, et seq.) by terminating Eugene Gatz's tenancy instead of allowing it to continue as to the Estate. Those allegations were incorporated into the third and fourth causes of action against both Paradise Cove and Laughlin for interference with prospective economic advantage and slander of title. The economic advantage claim sought damages for Gatz's loss of the home site and the resulting reduced sale value of the mobile home. Gatz also alleged that Laughlin "fraudulently and maliciously induced Paradise Cove" to lease the home site to her. The slander of title cause of action also sought damages for the reduced resale value of the mobilehome and alleged that Laughlin and Paradise Cove were "motivated by fraud and malice" when the home site was leased to Laughlin. The cross-complaint sought actual and punitive damages and attorney's fees, but did not seek injunctive relief.³

In his trial brief in the first action, Gatz argued that his right to continue his late father's tenancy at the home site was governed by the Mobilehome Residency Law, which prevented Laughlin and Paradise Cove from cutting off his tenancy.⁴ Laughlin argued in her trial brief that her late ex-husband's month-to-month tenancy was governed by the common law and therefore ended upon his death, allowing her to negotiate freely with Paradise Cove for her own lease. Gatz argued that Laughlin could not adjudicate a property title dispute through the creditor's claim procedure, and instead had to bring an action to determine title under Probate Code section 850.⁵ He asked the trial court to

³ We will refer to Laughlin's creditor's claim against the estate and Gatz's cross-complaint as the first action.

⁴ See Civil Code, sections 798.55 through 798.56, which limit the grounds and establish the procedural requirements for terminating a mobilehome park tenancy, and 798.70 through 798.71, which protect the rights of a mobilehome owner's heir to sell the mobilehome.

⁵ That section allows estate representatives or other interested persons to bring petitions to enforce various property and contractual rights.

declare Laughlin's lease void because of: (1) her "outrageous and deceptive actions" in secretly obtaining the home site lease on the heels of Eugene Gatz's death, in contravention of the un-finalized order in the divorce action; and (2) because of the governing provisions of the Mobilehome Residency Law. The trial was also intended as a default prove-up hearing against the Kissel Company, which owned Paradise Cove. Gatz's cross-complaint alleged that Paradise Cove and Laughlin were motivated by fraud and malice when executing Laughlin's home site lease. As to his default prove-up against Paradise Cove, Gatz asked the trial court to void its lease to Laughlin.

It does not appear that the precise fraud allegations of Gatz's cross-complaint were actually litigated at the trial of the first action, and Gatz testified that he was unaware of the circumstances by which Laughlin obtained her lease of the home site. The trial court found that the Mobilehome Residency Law was silent concerning the effect of a tenant's death on the heir's right to continue a month-to-month tenancy, and that therefore the common law rule applied, meaning that the tenancy ended when Eugene Gatz died. As a result, Paradise Cove was free to negotiate a new lease with Laughlin. On May 5, 2004, judgment was entered for Laughlin on both the complaint and the cross-complaint, awarding her more than \$41,000.⁶ On May 18, 2004, Laughlin dismissed her appeal from the divorce judgment. Gatz appealed the judgment for Laughlin in the first action (*Laughlin v. Gatz*, case No. B176877), but the appeal was dismissed in September 2004 because it had been filed too late.

⁶ Even though the trial of the first action was intended to serve as a default prove-up hearing against Paradise Cove, the judgment was silent on that point and there appears to be no judgment against the mobilehome park. This discrepancy is not explained.

C. *Second Action Between Gatz and Laughlin*

In February 2005, Gatz filed a petition under Probate Code section 850, subdivision (a)(2)(D) to determine that he, not Laughlin, held title to the home site lease.⁷ The petition alleged that Laughlin defrauded Paradise Cove into signing the lease with her because she lied about being either a prospective buyer or the legal owner of the mobilehome. Attached to and incorporated into the petition were copies of Laughlin's tenancy application and lease. On the application, Laughlin listed herself as co-owner with Eugene Gatz of the mobilehome. Consolidated with this petition were numerous objections filed by Laughlin to items listed in the first accounting by the Estate.⁸ These included contentions that the Estate should not have listed the home site lease as an Estate asset because it belonged to her, that the Estate was not properly accounting for certain monies owed to her, that certain assets were not being properly valued, and that certain improper payments had been made with Estate funds.

Laughlin argued that the judgment in the first action was res judicata of her right to the home site lease because the issue had been raised in that action by Gatz's cross-complaint. Gatz did not dispute the applicability of the res judicata doctrine, but argued instead that as a matter of equity and justice the trial court should construe the judgment in the first action narrowly to avoid rewarding Laughlin for her misconduct in obtaining the home site lease, and should deem her a constructive trustee for the Estate. The trial court held that the judgment in the first action determined Laughlin's right to the home site lease. The issue of fraud was alleged in the pleadings "and testimony was taken regarding how the rental agreement was obtained As that proceeding determined that Laughlin was lawfully permitted to lease the mobile home space, issues of fraud

⁷ Under that section, the personal representative of an estate may bring a petition to determine the decedent's claim to real or personal property as to which someone else claims title or possession.

⁸ We will refer to these two consolidated actions as the second action.

were decided.” In short, the trial court in the second action ruled that the judgment in the first action was res judicata of the fraud claims raised by Gatz in the second action.

As for Laughlin’s objections to the Estate’s accounting, the court noted Laughlin’s contention that most had either been responded to by the Estate, or were the proper subject of a supplemental accounting. The court ruled on some of the objections, finding that no further offsets were allowed on amounts owed to Laughlin, and that the home site lease was not an asset of the Estate. Laughlin also asked by way of an objection that the court order the Estate to remove the mobilehome from the home site. The court refused because an objection to an accounting was not the proper procedural vehicle, and because resolution of that issue was the subject of the third action that had already been filed, and which forms the basis of this appeal. The judgment ordered that the matter be returned to another department of the court “for filing of the supplement to the accounting to incorporate the rulings made herein.” No appeal was taken from this judgment.

D. *The Third Action Between Gatz and Laughlin,
Which is the Subject of This Appeal*

In January 2005 Laughlin moved into Gatz’s mobilehome, prompting Gatz to file a forcible detainer action to remove her from the home. (Super. Ct., L.A. County, Malibu District, case No. 05 R00020.) He also filed a separate action for trespass into and conversion of the mobilehome, and sought an injunction restraining Laughlin from occupying the mobilehome. (Super. Ct., L.A. County, case No. BC 331275.) As part of this action, Gatz alleged that Laughlin obtained the home site lease by fraudulent representations, that she in fact had no legal right to the lease, and that she held the home site lease as a constructive trustee of the Estate. In response to the trespass action, Laughlin cross-complained against Gatz for ejectment and for an injunction to remove the mobilehome from her home site. Gatz answered the cross-complaint and raised unclean hands as an affirmative defense based on Laughlin’s alleged misrepresentations in procuring the home site lease. By July 2005 Laughlin had vacated the mobilehome.

Because only the issue of damages remained in the forcible detainer action, it was consolidated with Gatz's other complaint and the Laughlin cross-complaint.⁹

Laughlin brought a motion in limine asking the trial court to determine that the judgments in the first and second actions were res judicata of her right to the home site lease, thereby requiring the court to determine that issue in her favor. Gatz replied that his unclean hands defense was based on Laughlin having no valid lease because she obtained the home site lease by defrauding Paradise Cove into believing she was an owner of the mobilehome. He contended that res judicata did not apply because: (1) the only issue tried in the first action was whether under common law Eugene Gatz's lease ended on his death, and the trial court's statement that Paradise Cove was free to re-let the home site was irrelevant dicta; (2) the cause of action for fraud did not accrue until it was discovered in May 2005 during the deposition of Paradise Cove's manager, which was taken as part of the second action; and (3) the issue of the validity of Laughlin's lease was not decided in the first action.¹⁰ The trial court granted Laughlin's motion and ruled that Laughlin's right to the home site lease had already been resolved in her favor. The court ordered that the trial would proceed on the remaining issues three days later.

When the trial on the remaining issues began, Gatz filed a motion for judgment or judgment on the pleadings, contending that Laughlin's claims for ejectment and injunctive relief should have been brought as a compulsory cross-complaint in the first set of actions. (Code Civ. Proc., § 426.30.) The trial court heard argument on the motion and took it under submission, but never announced or issued a ruling. The trial, which took one day, did not address the circumstances by which Laughlin obtained the home site lease. She was the only witness to testify, and was not examined on that subject.

⁹ We will refer to these actions as the third action. The third action was filed while the second action was still pending, and explains why the judgment in the second action referred to other pending actions when that trial court refused to consider Laughlin's request for an order removing Gatz's mobilehome from the home site.

¹⁰ Gatz's trial brief raised two other grounds, but we do not address them here because he did not raise them on appeal.

Portions of an expert witness's testimony at the trial of the second set of actions concerning the value of the mobilehome and the home site lease were read into evidence. Various exhibits were allowed in evidence, but they do not appear to relate to the issue of Laughlin's alleged fraud in procuring the lease.¹¹

After both sides rested, the court took the matter under submission. On February 16, 2006, the court entered a written judgment that included detailed factual findings. The judgment began by noting the court's pre-trial ruling that the judgments in the first two actions were res judicata of Laughlin's right to enter the home site lease with Paradise Cove. The court found that Laughlin was liable for forcible entry and detainer of the mobilehome, but was not liable for conversion, and awarded Gatz damages of \$40,500. Although the previous actions had determined Laughlin's right to the home site lease, the court relied on the equitable doctrine of unclean hands and refused to award her damages for the entire time Gatz's mobilehome occupied the home site. Because of the prior rulings establishing Laughlin's right to the home site, however, the court ordered Gatz to remove the mobilehome at his expense.

Gatz appealed from the portion of the judgment requiring him to remove the mobilehome. On appeal, he contends the trial court erred because: (1) once the trial

¹¹ Gatz's appellant's appendix does not identify any documents in the record as having been trial exhibits. When the court was determining what exhibits to allow in evidence, a general description of the contents was offered, but as far as we can tell, none involved evidence concerning Laughlin's alleged fraud. For instance, although her lease was admitted in evidence, the rental application where she supposedly misrepresented her status as co-owner of the mobilehome was not offered. Neither was the deposition transcript of the Paradise Cove employee who testified that Laughlin misled her in connection with the lease transaction. Although the order granting Laughlin's motion in limine on the res judicata issue does not mention excluding evidence, the heading of one section of Gatz's appellate argument refers to the exclusion of evidence as a result of the trial court's res judicata ruling. We can only surmise that the failure to introduce evidence about the manner by which Laughlin tried to garner the home site lease was due to the court's res judicata ruling. Ultimately, it makes no difference to our analysis, because the first question we must resolve is whether and to what extent res judicata applied. If the doctrine properly barred relitigating the fraud issue, then excluding evidence on that issue would have been proper.

court found Laughlin came into court with unclean hands, it was required to deny her any relief; (2) the Mobilehome Residency Law provides the exclusive means by which he can be required to move the mobilehome off the home site; (3) res judicata did not apply; and (4) Laughlin's failure to seek ejectment by way of compulsory cross-complaint in the first action barred her entire cross-complaint in the third action.

DISCUSSION

1. *Res Judicata Bars Gatz's Unclean Hands Defense*

The doctrine of res judicata establishes the preclusive effect of a final judgment on the merits and prevents relitigating the same cause of action in a second suit between the same parties or their privies. If a plaintiff wins at trial, the cause of action is merged into the judgment and may not be tried again in another lawsuit. All claims based on the same cause of action must be decided in a single suit, and those not raised at that time may not be raised in the future. Res judicata bars all causes of action that were, or could have been, litigated in the first action. That determination is made as of the date the first complaint is filed, and the scope of the litigation is framed by the complaint at that time. The doctrine is designed to prevent piecemeal litigation that would otherwise waste the time, money, and resources of both the parties and the judicial system. (*Allied Fire Protection v. Diede Construction, Inc.* (2005) 127 Cal.App.4th 150, 154-155 (*Allied Fire Protection*).) Res judicata applies not just to matters that were actually pleaded, but to matters “ ‘within the scope of the action, related to the subject-matter and relevant to the issues, so that [they] *could* have been raised.’ ” (*Aerojet-General Corp. v. American Excess Ins. Co.* (2002) 97 Cal.App.4th 387, 402, italics in original.)

Gatz contends the trial court in the third action erred by applying the doctrine of res judicata to his claims that Laughlin obtained the home site lease through fraud.¹²

¹² Gatz's appeal is directed solely at that portion of the judgment for Laughlin on her cross-complaint that ordered Gatz to remove the mobilehome from the home site. Even though the parties have not framed it this way, as far as we can tell, the only issue

Gatz devotes almost his entire appellate argument on this issue to attacking the judgment in the first action. According to Gatz, res judicata is not applicable to that judgment because the primary issue in the first set of actions concerned applicability of the Mobilehome Residency Law, not whether Laughlin's lease was obtained by fraud or unclean hands. As part of this contention, he asserts that the trial court's statement in the first action that Paradise Cove was free to negotiate a new lease with Laughlin was dicta, and not part of the judgment for res judicata purposes.

These contentions ignore the principles of res judicata discussed above: all claims based on a cause of action – those actually raised and those that could have been raised – must be tried at the same time in the same suit, and the scope of the litigation is framed by the complaint. (*Allied Fire Protection, supra*, 127 Cal.App.4th at pp. 154-155; *Aerojet-General Corp. v. American Excess Ins. Co., supra*, 97 Cal.App.4th at p. 402.)¹³ The cause of action is defined as the plaintiff's primary right, regardless of how many different facts or legal theories are asserted to vindicate that right. If two actions involve the same injury to the plaintiff and the same wrong by the defendant, then the same primary right is at stake. (*Henry v. Clifford* (1995) 32 Cal.App.4th 315, 321.)

In *Tensor Group v. City of Glendale* (1993) 14 Cal.App.4th 154 the plaintiff property owner sued the city, claiming that an ordinance restricting his development rights was unconstitutional. The trial court agreed and granted the plaintiff a writ of mandate, but the judgment was silent as to plaintiff's request for money damages. After that judgment became final, the plaintiff filed another action for inverse condemnation,

affected by the trial court's ruling, at least for purposes of this appeal, was Gatz's affirmative defense of unclean hands. The res judicata doctrine also applies to bar affirmative defenses based on issues that were or could have been adjudicated in earlier proceedings. (*Alpha Mechanical, Heating & Air Conditioning, Inc. v. Travelers Casualty & Surety Co. of America* (2005) 133 Cal.App.4th 1319, 1327-1332.)

¹³ Gatz appears to rely on principles applicable to the related collateral estoppel doctrine. (See *Branson v. Sun-Diamond Growers* (1994) 24 Cal.App.4th 327, 346 [if res judicata is not applicable because a different cause of action is involved, the related principles of collateral estoppel will bar re-adjudication of issues that were actually and necessarily determined in a previous action].)

seeking money damages for the city's partial taking of his property up to the time the ordinance was invalidated. The city demurred to the second action, contending that the judgment in the first action was *res judicata* and barred the new claim. The trial court sustained without leave to amend the city's demurrer, and the appellate court affirmed. The appellate court noted that the first action sought injunctive relief and money damages based on injuries caused by the limitations placed on plaintiff's use of its property by the ordinance, and held that "[t]his injury or primary right is identical to that being propounded in [the new action]." (*Id.* at p. 160.) Applying that logic here, we conclude that the primary right at stake in the first action concerned the same primary right which underlay Gatz's unclean hands defense in the third action.

The first action began when Laughlin sued on her creditor's claim. According to Gatz, that complaint included a claim that Laughlin had an interest in both the mobilehome and the home site lease. Gatz cross-complained against Laughlin and Paradise Cove, seeking to void the lease and obtain money damages based on the four causes of action previously described. However, those were merely Gatz's theories of recovery and his desired remedies. The basis of each cause of action was Gatz's contention that the mobilehome site had been wrongly leased by Laughlin, and *that* was the primary right at issue in the first action. A theory of recovery based on Laughlin's alleged fraud in procuring the lease by misrepresenting her status as a co-owner of the mobilehome was certainly within the scope of such an action, and was both related to the subject matter and relevant to the issues so that it could have been raised in the first action. For example, if Gatz had prevailed in the first action and obtained a judgment voiding the home site lease, but had been denied money damages, a new action for damages based on Laughlin's alleged fraud would clearly be barred by the *res judicata* doctrine. (See *Price v. Sixth Dist. Agricultural Ass'n.* (1927) 201 Cal. 502, 510 [if the

existence or validity of a lease has been adjudicated in one action, it is res judicata when it is placed in issue again in another action].)¹⁴

Gatz also contends that res judicata does not apply to the fraud allegations raised in the third action because he did not discover the fraud until May 2005, when his lawyers deposed Paradise Cove's manager, who testified that Laughlin lied about owning the mobilehome when she applied for the home site lease. Because the cause of action for fraud did not accrue until he discovered it, Gatz contends res judicata should not apply. (See *Allied Fire Protection, supra*, 127 Cal.App.4th at pp. 155-156.) This contention fails because Gatz has never presented evidence to support a claim that he did not or could not with reasonable diligence have discovered Laughlin's alleged fraud during the first set of actions. (*Parsons v. Tickner* (1995) 31 Cal.App.4th 1513, 1525 [cause of action for fraud accrues when fraud is actually discovered, or when, through reasonable diligence, it should have been discovered].)

The only evidence offered by Gatz to the trial court is the May 2005 deposition transcript of Paradise Cove manager Deborah Dahlberg, who testified that when Laughlin leased the home site, Laughlin claimed to be co-owner of the mobilehome, even though the divorce court had already announced its intention to award the mobilehome and the lease site to Eugene Gatz. Nowhere in the record is there a declaration, deposition testimony, or other evidence showing that Gatz or his lawyers did not or could not with reasonable diligence have known that information before that time. When Gatz filed his cross-complaint in the first action in October 2002, he alleged fraud by Laughlin, yet failed to explain why he did not obtain a copy of her home site lease and application, or depose Dahlberg at that time. Most damning of all, however, is Gatz's first amended petition in his Probate Code section 850 action that was filed as part of the second action. In that pleading, Gatz alleged that Laughlin fraudulently represented to Paradise Cove that she was the owner of the mobilehome when she signed the home site lease, and that he "first discovered Laughlin's fraudulent acts on or about July 18, 2002," which was

¹⁴ Our conclusion is further buttressed by Gatz's allegations that Laughlin obtained the home site lease through fraudulent conduct.

three months before Gatz filed his cross-complaint in the first action. On this record, Gatz's contention that res judicata did not bar his fraud allegations because he did not discover the fraud until May 2005 must be rejected.

Apart from the res judicata effect of the judgment in the first action, Gatz barely mentions the judgment in the second action, where the trial court found that the judgment in the first action was res judicata of Gatz's claim that Laughlin fraudulently obtained the home site lease by telling Paradise Cove she was part owner of the mobilehome. In his opening brief, Gatz states that as to the second set of actions "there is no final judgment. Therefore, the doctrine of res judicata does not apply." His reply brief adds little more – only that the judgment is not final because it was returned to the probate court for a supplemental accounting. (See Code Civ. Proc., § 904.1; *Kinsmith Financial Corp. v. Gilroy* (2003) 105 Cal.App.4th 447, 451-452 [generally only one final judgment that resolves an entire case is appealable, but there are exceptions to that rule].)

The only statement in the record concerning how Gatz's Probate Code section 850 petition and Laughlin's objections to the Estate's first accounting came to be tried at the same time is found in the parties' joint trial statement. According to that statement, the two proceedings were "consolidated for trial." Under Code of Civil Procedure section 1048, subdivision (a), separate actions may be consolidated either for all purposes or for trial only. When actions are consolidated for trial only, separate findings and judgments may be rendered, and a judgment as to one of the actions is final and appealable. (*Stubblefield Construction Co. v. City of San Bernardino* (1995) 32 Cal.App.4th 687, 701-702.)

Another exception to the one final judgment rule is the collateral order doctrine, where the trial court's ruling on a collateral issue is substantially the same as a final judgment in an independent proceeding because it leaves the court no further action to take on a matter which is severable from the general subject matter of the litigation. In such a case, an appeal will lie from the collateral order even though other matters in the case remain to be determined. To be appealable, the collateral order must direct the payment of money by the appellant, or direct the performance of an act by or against him.

(*Lester v. Lennane* (2000) 84 Cal.App.4th 536, 561.) The judgment in the second action could be construed as finally determining Laughlin's right to the home site lease, which was severable from the remaining objections to the Estate's accounting that were ordered back to another court for a supplemental accounting.

Gatz's appellate briefs do not acknowledge these two exceptions to the one final judgment rule. He has not discussed the facts concerning the consolidation of the two proceedings or the nature, scope, and effect of the judgment in the second action. Neither has he cited to any authority on the one final judgment rule or its exceptions. We therefore deem the issue waived (*Landry v. Berryessa Union School Dist.* (1995) 39 Cal.App.4th 691, 699-700) and hold that the judgment in the second action was final, appealable, and res judicata of Gatz's unclean hands defense to the extent it was based on allegations that Laughlin acted fraudulently when she obtained the home site lease by lying about her status as co-owner of the mobile home.

2. The Order to Remove the Mobilehome Was Proper

The other basis for Gatz's unclean hands defense to Laughlin's ejectment claims was her unlawful entry and occupation of the mobilehome between January and July 2005. The trial court found for Gatz on this issue and refused to award Laughlin any damages for the time Gatz's mobilehome had occupied the home site, from approximately November 2001 through the trial date. Gatz contends that because the unclean hands doctrine provides a complete defense, the court could not award Laughlin any relief and therefore erred by ordering him to remove the mobilehome from the home site.

Unclean hands is an equitable doctrine that is invoked as a complete affirmative defense if the plaintiff has engaged in inequitable conduct in connection with the matter in controversy. (*Dickson, Carlson & Campillo v. Pole* (2000) 83 Cal.App.4th 436, 446.) In applying that doctrine, the court must consider both the degree of harm caused by the plaintiff's misconduct and the extent of the plaintiff's alleged damages. Whether the defense applies in a particular case depends on the analogous case law, the nature of the

misconduct, and the relationship of the misconduct to the claimed injuries. We review the trial court's decision under the abuse of discretion standard. (*Id.* at pp. 446-447.) Thus, although the defense is a complete one, its application is limited to the extent of the plaintiff's misconduct as it relates to the subject matter of the litigation to which it is a defense. (*Rosenfeld, Meyer & Susman v. Cohen* (1987) 191 Cal.App.3d 1035, 1061.)

Gatz's unclean hands defense was raised in opposition to Laughlin's claim for money damages and ejectment of Gatz's mobilehome from the home site lease. On appeal, Gatz tries to link Laughlin's trespass into the mobilehome with her alleged fraud in obtaining the home site lease as grounds for denying her any relief.¹⁵ This attempt fails because the res judicata effect of the judgments in the first and second actions resolved this issue against him and because, as a result, no evidence concerning Laughlin's acquisition of the home site lease was introduced at the trial. Furthermore, Laughlin's conduct in procuring the home site lease in 2001 is unrelated to her six-month trespass into the mobilehome in 2005.

Support for our conclusion can be found in *Sheppard v. Wilcox* (1962) 210 Cal.App.2d 53 (*Sheppard*), which involved the last in a series of court actions by competing groups of shareholders to obtain majority control of a corporation. In the first series of actions, the defendants were given control. A second set of actions by the defendants for administrative mandate unsuccessfully challenged the state corporation commissioner's decision to effectively return majority control to the plaintiffs. In the third action that was on appeal in *Sheppard*, plaintiffs obtained another judgment in their favor. On appeal, the defendants contended that the plaintiffs' unclean hands in initially

¹⁵ In his opening appellate brief, Gatz argues that "Laughlin's wrongful breaking and entering of the Estate's mobilehome is connected to her purported lease of [the home site] in that the lease gave her the opportunity to break and enter into the mobilehome without being arrested. Also, Paradise Cove . . . is a gated community and without the lease, Laughlin would not have had access to the mobilehome." In his appellate reply brief, Gatz contends that "Laughlin is simply making up the law because the facts and law applicable to this case do not support Laughlin's acquisition of the lease with unclean hands by misrepresenting that she was an owner of the mobilehome and her unclean hands in wrongfully occupying the mobilehome."

obtaining control of the company barred their claims. The appellate court disagreed and affirmed the judgment because the alleged misconduct concerned prior transactions other than those before the trial court in the action on appeal. The *Sheppard* court held that “[t]he misconduct must infect the cause of action before the court. Relief is not denied because the plaintiff may have acted improperly in the past or because such prior misconduct may indirectly affect the problem before the court. A party may have relief in connection with a transaction itself untainted although his original title may have been tainted by improper conduct.” (*Sheppard, supra*, at p. 61.) Because the plaintiffs’ misconduct related to transactions that were remedied in the first actions, it was moot. “The wrong done to plaintiffs here is independent; retribution for earlier wrongs cannot be vindicated under the doctrine of unclean hands.” (*Id.* at p. 62.)

If a party’s misconduct that was remedied in one action cannot form the basis of an unclean hands defense in a later action, then surely a judgment finding that no misconduct occurred must bar the use of that alleged misconduct as part of an unclean hands defense in another action. In short, Laughlin’s alleged misconduct in procuring the lease had already been resolved and had no legal relationship to her misconduct in occupying the mobilehome. Gatz was therefore left with an unclean hands defense based on Laughlin’s six-month trespass into the mobilehome, a trespass that ended six months before the trial of the third set of actions began. Because the trial court was bound to limit its application of the unclean hands defense to the extent of Laughlin’s misconduct (*Rosenfeld, Meyer & Susman v. Cohen, supra*, 191 Cal.App.3d at p. 1061; *Sheppard, supra*, 210 Cal.App.2d at pp. 61-62), we see no abuse of discretion in limiting her money damages on account of her trespass while allowing her to enforce her unrelated and previously adjudicated right to the home site lease.¹⁶

¹⁶ Because Laughlin’s trespass was limited to a six-month period, arguably her right to trespass damages before and after the trespass was not affected by the unclean hands defense. She has not appealed the judgment, however, and we therefore do not address that issue.

3. *Inapplicability of the Mobilehome Residency Law*

Gatz contends that the trial court's order to remove his mobilehome from Laughlin's home site should be reversed because the authority for such an order stems exclusively from various provisions of the Mobilehome Residency Law. (See, e.g., Civ. Code, §§ 798.55 [Legislature finds that mobilehome park tenants need special protections against eviction]; 798.56 [sets forth limited grounds for terminating mobilehome park tenancy]; 798.61 [eviction procedure requires rent be 60 days overdue, posting of 30 days' notice, and filing of petition by management in court].) We reject this contention for two reasons. First, the judgment in the first action determined that the Mobilehome Residency Law was inapplicable where a month-to-month tenant died. Even if that judgment were wrong, an issue we do not reach, that judgment is *res judicata* of the issue. Second, the Mobilehome Residency Law establishes and defines the relationship between

We recognize that the trial court's judgment included comments that might be construed as a finding that Laughlin's conduct in procuring the home site lease was a part of its unclean hands ruling: "In this instance, Laughlin took advantage of the death of Eugene Gatz by 'filling the vacuum' left by his passing to engineer a leasehold of the space for her own benefit and without regard to the decedent or his heir. Although no specific evidence of any misrepresentations made by her to the mobilehome park management were provided at trial (as accused by Gatz), her entry into the lease was in bad faith." Earlier, however, the judgment said that "[w]hether she took unfair advantage of the presence of the Gatz mobilehome . . . as a predicate for leasing this space is unclear and was not factually established by either side at trial." When it came to making the unclean hands ruling, the judgment said that "occupancy of the premises, including forcible entry into the mobilehome and living there as if was hers, constitutes wrongful conduct for which she should not be rewarded" and showed her unclean hands. This description of Laughlin's conduct appears to exclude the means by which she obtained the home site lease. To the extent there is any ambiguity in the judgment, we will resolve that ambiguity in favor of the judgment, in a way that makes it valid and that construes it with reference to the law regulating the rights of the parties. (*Hirshfield v. Schwartz* (2001) 91 Cal.App.4th 749, 766-767.) Because the trial court properly determined that *res judicata* barred use of the home site lease negotiations in the unclean hands defense, and because as the court noted there was no evidence on that issue, we construe the judgment as finding that unclean hands was proper based solely on Laughlin's trespass into the mobilehome.

the managers of mobilehome parks and their tenants. (See Civ. Code, §§ 798.55, subd. (b) [the *management* may not terminate a tenancy without following the specified procedures]; 798.56, subd. (a) [tenancy shall be terminated by *management* for only specified reasons].) It says nothing about the relationship between a lawful tenant and a squatter.

4. *Laughlin's Failure to File Cross-Complaint for Ejectment*

Under Code of Civil Procedure section 426.30, subdivision (a), a defendant or cross-defendant who does not file a cross-complaint to allege any related cause of action which he has against the plaintiff may “not thereafter in any other action assert against the plaintiff the related cause of action not pleaded.” Gatz contends that Laughlin’s ejectment claim was related to his cross-complaint in the first action and that her failure to raise the claim at that time barred her from raising it as part of the third action. His contention fails for two reasons. First, Gatz has waived the issue because he did not plead it in his answer as an affirmative defense, but instead waited until the first day of trial to raise it. (*Hulsey v. Koehler* (1990) 218 Cal.App.3d 1150, 1156, 1158.) Second, because Gatz could remove the mobilehome, his trespass was a continuing one, and not of a permanent nature. As a result, Laughlin was free to maintain a succession of actions based on a theory of continuing trespass for damages sustained from time to time, even though a cause of action based solely on the original wrong might have been barred. Otherwise, the defendant would be given the right to continue his wrongful trespass. (*Mangini v. Aerojet-General Corp.* (1991) 230 Cal.App.3d 1125, 1148-1149; *Field-Escandon v. DeMann* (1988) 204 Cal.App.3d 228, 233.) We do not believe Code of Civil Procedure section 426.30 should apply in this situation because it would cut off a claim for a continuing trespass and allow it to continue forever without remedy.

DISPOSITION

For the reasons set forth above, the judgment is affirmed. Respondent Laughlin's request for appellate sanctions is denied.¹⁷

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

RUBIN, J.

WE CONCUR:

COOPER, P. J.

FLIER, J.

¹⁷ Shortly before oral argument of this matter, Gatz submitted a request to judicially notice his recent attempts to enforce his \$40,500 trespass judgment against Laughlin in the third action, including the imminent execution of that judgment against the home site lease. Because it is irrelevant to the issues on appeal, we deny the request for judicial notice. We wish to make clear, however, that our decision is not intended to address or affect the merits or outcome of Gatz's judgment enforcement proceedings.